FUTURE OVERSIGHT OF THE ADMINISTRATIVE JUSTICE SYSTEM:
THE PROPOSED ABOLITION OF THE ADMINISTRATIVE JUSTICE & TRIBUNALS COUNCIL

The AJTC welcomes the report of the Public Administration Select Committee published on 8 March 2012. The AJTC has also had an opportunity to consider the Government’s response to the report published in May 2012. This letter sets out the AJTC’s comments on both the Committee’s report and on the Government’s response.

Overall comments
Like the Government we welcome the Committee’s insightful report and the attention the Committee has given to administrative justice which, as the Committee points out “may seem obscure and technical, but it touches upon the lives, the standards of living, and rights of millions of citizens every year”. We also welcome the view of the Committee that the present scale of poor decision making by government, with the resulting injustice to individuals and cost to the taxpayer, is unacceptable.

It is an irony that while the AJTC does not welcome the Government’s proposal that it should be abolished, it nevertheless welcomes the attention that the resulting debate has brought to key issues in administrative justice more generally.

The AJTC set out its views on the proposed abolition in its original evidence to the Committee. We are disappointed that it remains the Government’s intention to abolish the AJTC but we do not seek to rehearse the debate in this document. We remain of the view that the proposed abolition is misguided and we share the view of the Committee that “the role of the AJTC in providing an independent overview of the system is … one of vital national importance”. If in due course a draft abolition order is laid before Parliament we will bring this Response to the attention on the House of Lords Merits of Statutory Instruments Committee.

Recommendations

Proposal to abolish the AJTC
Setting aside the debate as to whether or not the AJTC meets the Government’s three criteria for retention, we welcome the Committee’s view (para.54) that Parliament should consider “whether sufficient and appropriate provision has been made for the continued performance of any necessary functions previously carried out by the AJTC” when it considers any draft abolition order. We are pleased that the Committee shares the view of the AJTC and others that “oversight by an entity independent of government is valuable and should be continued in some form” (para 45). As has been pointed out, a government department lacks the essential independence of judgement and freedom of action to challenge policy proposals as enjoyed by the AJTC. We note that in its response the Government continues to disagree with this view.

**Consequences of abolishing the AJTC**

We welcome the Committee’s recommendation that the government provide more information on its proposal for the membership and operation of its new group of experts and key stakeholders. We hope this is an issue that Parliament will explore further when the draft Order is laid. We note the description of the group in the Government’s response and are aware that the first meeting of the group has taken place. We have a number of concerns about its likely lifespan and effectiveness: terms of reference do not yet appear to be settled; members are not appointed through open competition; the membership represents sectoral interests rather than an overview of the whole system and the group’s role remains unclear; and the limited composition of the group does not take full account of the UK-wide nature of the administrative justice system. The Merits of Statutory Instruments Committee may wish to consider carefully the agreed Terms of Reference for the group, the proposals concerning the frequency of its meetings and the secretariat support for the group as and when a draft Order is laid. We also invite the Public Administration Select Committee to ask for an account of the operation of the group when it next considers administrative justice issues.

Abolishing the AJTC has significant implications so far as the constitutional arrangements for the United Kingdom are concerned. Devolution has led to increased complexity in the arrangements for government across the United Kingdom. The Committee noted that “because of the nature of the administrative justice system, the potential scope of the AJTC’s activities is considerably broader than other bodies overseeing the operation of other elements of the judicial system”. The AJTC also of course discharges its functions across the United Kingdom as a whole, being able to consider devolved jurisdictions as well as those reserved to the United Kingdom Government. As such the AJTC is able to bring to bear a unique perspective across that already much broader landscape. Abolition of the AJTC will, correspondingly, remove that broader and unique perspective, which the MoJ is constitutionally unable to provide to the same extent for Scotland or for Wales as it may consider it can properly do for England. MoJ is constitutionally inadequate to deal properly with the roles and functions of the AJTC across the entire UK. Abolition of the Council, without any provision for the consequences in the different parts of the United Kingdom, will thus impair the achievement of an accessible, fair and efficient administrative justice system across the United Kingdom as a whole, further complicating government within the UK, and disadvantaging citizens.

**Resources and expertise**

We very much welcome the Committee’s recommendation that the Government should provide verifiable assurances about staffing plans in this area for the foreseeable future, and we note the Government’s commitment to provide further information about staffing when the Order is laid. The Committee is already aware of our deep scepticism about the likelihood that Government will be able to retain an adequate core of expertise concerning administrative justice or give the subject matter sufficient priority in competition with higher profile policy areas such as crime. One of the major benefits of an arm’s length body is the greater continuity of staff and members, and of the corporate memory it develops. We note that the Government has included an action to develop a strategic work
programme for administrative justice in the updated MoJ Business Plan published in May 2012. We are concerned that, although almost two years have now passed since the Government announced its intention to abolish the AJTC, its strategy for administrative justice should still be a work in progress. The Government states in its response that the flexible resource management arrangement in the Department is responsive to the demands of the work set by Ministers. It also states that it is committed to ensuring that resourcing remains sufficient to meet the Government’s policy aims in this area. In the absence of specific commitments in the Business Plan it is difficult to imagine how administrative justice will continue to attract sufficient staff resources after the Order-making process is complete.

Cost savings
We have questioned the Government’s figures in relation to cost savings achieved through abolition of the AJTC and note that the Committee also doubts the figures. The Government in its response has reduced its estimate from £4.3m to £2.8m. We believe the revised figure is still over-estimated and look forward to seeing the updated analysis of savings when the draft Order is laid. The UK dimension is only one of the elements of uncertainty in these costings. The AJTC is a UK body funded through the MoJ and not surprisingly the question has already been raised as to how much it will cost to continue to fund the continuation of the AJTC’s functions in Scotland and Wales, neither of whose Governments appear content to see an end to work of this kind. We have proposed to the Ministry of Justice that we should seek to agree a joint paper on cost savings in advance of the laying on any draft Order.

We wholeheartedly agree with the Committee’s view that, notwithstanding the future of the AJTC, the Government’s priority should be to improve its own decision-making and redress systems. We very much welcome the Committee’s intention to inquire into this area in depth during this Parliament. We believe that there are significant efficiency savings to be made through improved decision-making and reconsideration of decisions, resulting in reduced numbers of tribunal hearings.

We also share the Government’s view that the reasons why administrative decisions are overturned by tribunals are varied both within and between jurisdictions. It is in the nature of the beast, of course, that a government department with levers of control can deliver effective improvement. It is not disputed that there is great deal that can be done by officials in the MoJ and HMCTS, working with colleagues across government. However, the Council would still contend that as an external monitor it provides a vitally different contribution to that of internal inspection. There are, in addition, real barriers to progress if the Council were to be abolished and such matters left with the MoJ:

- The ‘difficult’ nature of the issues, which require effective cross-government and inter-departmental working;
- The relative lack of Cabinet Office attention to this area. The ‘error’ strand of its current Fraud, Error and Debt strategy is not well developed and is silent on the role MoJ has to play;
- The absence of public commitments – let alone actions - to achieve progress on the ‘right first time’ agenda by HMCTS and MoJ. As part of its Framework Document HMCTS has an organisational objective to help drive up the standard of government decision making but it makes no commitments in support of this objective in its Business Plan.

Conclusion
We welcome the attention the Committee has drawn to administrative justice and the key characteristics of an independent scrutiny role, namely a user-centred perspective on the system; independent scrutiny and observation of hearings; and the ability to report independently and fearlessly. The Government in its response states that it will retain the ability to commission independent reviews or research but we are not aware of any
concrete plans in this respect. We continue to reject the assertion by Government, repeated in its response to the Committee, that the development of a rationalised tribunal system under HMCTS has gradually eroded the need for the additional layer of scrutiny offered by the AJTC. The rationalised tribunal system and the creation of the AJTC were both part of the same package of reforms enacted by the Tribunals, Courts and Enforcement Act 2007.

We are pleased to note the emphasis the Committee has given to the administrative justice system as a whole, including ombudsmen, tribunals outside HMCTS, and alternative dispute mechanisms across England, Wales and Scotland. We remain concerned that these aspects are still not fully appreciated by government, although we are pleased that the Government acknowledges the importance of developing alternative approaches to dispute resolution.

We welcome the Committee’s recommendation that the MoJ should report annually to Parliament on the operation of the administrative justice system in the event that the AJTC is abolished. However, we are very sceptical about the suggestion in the Government’s response that this can be achieved by building upon the HMCTS annual report. HMCTS, which came into existence in April 2011, has recently published its first annual report and we are concerned that it does not do justice even to tribunal matters which are within the remit of HMCTS. Moreover, we fail to see how in the future HMCTS will be able effectively to report to Parliament on those aspects of the system that are not within its remit.

We understand from the Ministry of Justice that it does not intend to lay a draft abolition Order for the time being, pending resolution of unforeseen issues in relation to Wales. Against that background we intend to update our work programme and begin work on a new 3-year strategic plan, so that we are able to continue making the best use of our resources as we can while we remain in existence. We will also consider whether it may be possible to use the additional time to develop a ‘toolkit’ which will be helpful both to MoJ and to Parliament in ensuring that the operation of the administrative justice system can continue to be scrutinised in the event of our eventual abolition.

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